

| Supreme Court, U.S.
FILED

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No. _____
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**In The
Supreme Court of the United States**

In Re DAVID R. SINA, Petitioner

**PETITION FOR A WRIT OF MANDAMUS TO THE
MINNESOTA SUPREME COURT, AND THE
HONORABLE PAUL H. ANDERSON, ASSOCIATE
JUSTICE OF THE MINNESOTA SUPREME COURT**

PETITION FOR WRIT OF MANDAMUS

**David R. Sina
Petitioner Pro Se
5755 Heather Ridge Dr.
Shoreview, MN 55126
(651) 484-4303**

QUESTION PRESENTED

The Minnesota Supreme Court Makes rules regarding bar examinations in Minnesota. The rules require that an application be filed and a filing fee be paid before the State Board of Law Examiners has authority to conduct a character investigation on anyone. Petitioner did neither, yet the State Board of Law Examiners issued a determination (order) that petitioner not be allowed to take the Bar Exam and/or be admitted to the Bar of the State of Minnesota. The question presented is:

1. Whether the Minnesota Supreme Court should be ordered to vacate and expunge from the record the Minnesota State Board of Law Examiners character investigation hearings of April 9, 1987 and April 25, 1988 and it's Determination (Order) of April 4, 1989, on the grounds that the Board of Law Examiners acted without subject matter jurisdiction and issued a void Determination, as petitioner was a private citizen that had not made any application to take the Bar Exam nor had he paid any filing fee, both of which were required by their own rules.

PARTIES NOT NAMED IN CAPTION

1. The Honorable Paul H. Anderson
Associate Justice
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
2. State Board of Law Examiners
380 Jackson Street
Suite 201
St. Paul, Minnesota 55101

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**Rule 100A, *Rules of the Supreme Court and State Board
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**Rule 104, *Rules of the Supreme Court and State Board
of Law Examiners for Admission to the Bar as
amended Oct. 1, 1986, Dec. 23, 1986 & Jan. 20, 1987 .1, 7***

OPINIONS BELOW

The judgment, transcript of judgment and order of the Minnesota Supreme Court denying petitioner's motion to vacate the State Board of Law Examiners Determination of April 4, 1989 (App., *infra*, A-1 to A-3), is unpublished. The Findings of Fact, Conclusions of Law and Determination of the State Board of Law Examiners dated April 4, 1989 (App., *infra*, A-4 to A-12), is unpublished.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. section 1651 (a) and 28 U.S.C. section 1257 (a) as it is a state court proceeding relating to admission to the Bar.

CONSTITUTIONAL PROVISIONS INVOLVED

The federal question involved is under the Fifth and Fourteenth Amendments to the United States Constitution. A complete discussion of the due process and equal protection issues is included in the section entitled Reasons for Granting the Writ.

STATEMENT OF FACTS

1. Petitioner applied to take the July, 1985 Bar Exam in the State of Minnesota, took the 1985 Bar Exam and was unsuccessful on it.

2. Petitioner has not filled out any application nor paid any filing fee to take any Bar Exam subsequent to the July, 1985 Bar Exam.

3. Rule 100E of the State Board of Law Examiners for Admission to the Bar requires any applicant who was unsuccessful on a prior Bar Examination to file a new application and to pay the proper fee as required by Rule 105. (Rules of the Supreme Court and State Board of Law

Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec.23, 1986 and Jan. 20, 1987).

4. Rule 104 authorizes the Bar Board to conduct a hearing for background investigation only upon those who have filed an application and paid the filing fee as required by Rule III and Rule 100. (Rules of the Supreme Court and State Board of Law Examiners for Admission to the Bar as amended Oct. 1, 1986, Dec. 23, 1986 and Jan. 20, 1987).

5. On March 6, 1987, Bar Board director Margaret Fuller Corneille notified petitioner that the Board of Law Examiners has scheduled a formal hearing for April 9, 1987 "on your application" pursuant to Rule 104.

6. The Bar Board conducted it's first character investigation hearing on petitioner on April 9, 1987 and conducted a second character investigation hearing on April 25, 1988.

7. The Bar Board issued it's Determination (Order) on petitioner on April 4, 1989 where they stated that petitioner "... should not be allowed to take the Bar Examination and/or be admitted to the Bar of the State of Minnesota". (App., *infra*, A-4).

8. On December 23, 2003, Bar Board director Margaret Fuller Corneille wrote to petitioner and stated that "Our files contain no Bar application other than that which you filed for the July 1985 Bar Exam". (App. *Infra*, A-13).

9. On December 29, 2003, petitioner brought a motion in front of the Minnesota Supreme Court to vacate and strike from the record the April 9, 1987 and April 25, 1988 hearings and April 4, 1989 Determination (Order) of the Bar Board on the basis Minnesota Rule of Civil Procedure 60.02 (d) (Void Judgment). Petitioner filed an accompanying Memorandum of Law with his motion.

10. On January 29, 2004, the Minnesota Supreme Court, per the Honorable Paul H. Anderson, denied petitioner's motion to vacate (App., *infra*, A-3) and judgment was entered on March 8, 2004 based upon this order. (App., *infra*, A-1).

REASONS FOR GRANTING THE WRIT

I. The Minnesota Supreme Court failed to vacate a void determination of the State Board of Law Examiners.

Petitioner contends that the Order of denial by the Minnesota Supreme Court constituted an abuse of judicial power, a usurpation of power, and an improper failure to exercise its jurisdiction and authority when it had a duty to do so. Petitioner is a private United States citizen that had done nothing to invoke the jurisdiction of the State Board of Law Examiners, yet the Minnesota Supreme Court refused to vacate its void determination. Petitioner has no other adequate remedy to compel the Minnesota Supreme Court to enforce its own rules that it promulgated and established for the State Board of Law Examiners, for which the State Board of Law Examiners is required to follow. The refusal of the Minnesota Supreme Court to follow its own rules that it made for the State Board of Law Examiners is not remediable through the ordinary course of appeal or writ of certiorari. The Order of the Minnesota Supreme Court is one which this Court can and should correct by writ of mandamus.

Petitioner's writ for mandamus to this Court is a bar admission matter, for which bar admission matters may be brought only in the Supreme Court of the United States. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Bar Board matters are judicial proceedings, which are reviewable by the Supreme Court of the United States. *District of Columbia Court of Appeals v. Feldman*, supra. When a bar admission claim is made in a state court and a denial of the right is made by judicial order, it is a case which may be reviewable under Article III of the Constitution when federal questions are raised and proper steps taken to that end, in this Court. *In Re Summers*, 325

U.S. 561, 567-569 (1945). Therefore, petitioner's writ of mandamus is properly reviewable by this Court.

This truly is an exceptional circumstance requiring this Court to compel the Minnesota Supreme Court to exercise its authority when it was its duty to do so. *Platt v. Minnesota Min. & Mfg. Co.*, 376 U.S. 240 (1964). The Minnesota Supreme Court had a duty to protect this private citizen petitioner from the actions of the State Board of Law Examiners for which they had no authority or jurisdiction over him. Mandamus is an extraordinary remedy, appropriately exercised where the lower court has improperly failed to exercise jurisdiction or has taken action amounting to a usurpation of power. *Kerr v. U.S. Dist. Court for Northern District of California*, 511 F. 2d 192 (C.A. 9 1975), affirmed 426 U.S. 394. Mandamus is appropriate to those situations where a lower court has taken action which it has no power to take or when the court has acted and so abused its discretion that there is a sort of usurpation of power which will justify entry of the writ. *U.S. v. Dorfman*, 690 F. 2d 1217 (C.A. 7 1982). The Minnesota Supreme Court has abused its discretion for failure to vacate hearings and a determination of the Board of Law Examiners against a private United States citizen, for which the State Board of Law Examiners had no authority or jurisdiction over him.

The Minnesota Supreme Court has the exclusive authority and jurisdiction to make any rules regarding the State Board of Law Examiners:

"The supreme court shall, by rule from time to time, prescribe the qualifications of all applicants for admission to practice law in this state, and shall appoint a board of law examiners, which shall be charged with the administration of the rules and with the examination of all applicants for admission to practice law." *Minn. Stat. 481.01*.

The State Board of Law Examiners has no inherent jurisdiction. It only has jurisdiction conferred upon it by law or the Minnesota Constitution. *Carlson v. Chermak*, 639 N.W. 2d 886 (Minn. App. 2002); *Minn. Constitution Art. VI, Sections 1 & 5*. A determination of an administrative agency is void and subject to collateral attack where it is made without or in excess of statutory power. *McKee v. Ramsey County*, 245 N.W. 2d. 460 (1976). Where a court acts without authority or jurisdiction, its judgments and orders are regarded as nullities. *Burnham v. Superior Court of California*, 495 U.S. 604. They are not voidable, but simply void. *Elliott v. Peirsol*, 26 U.S. 328 (1828). The State Board of Law Examiners, as a Minnesota administrative agency, cannot disregard its own rules that the agency has properly adopted. Rules have the force and effect of law. *Springborg v. Wilson & Co.*, 73 N.W. 2d 433 (1956). There is a violation of due process when an administrative agency takes action that is beyond the scope of its own procedural regulations. *Berends v. Butz*, 357 F. Supp. 143 (D. Minn. 1973); *Red School House Inc. v. Office of Economic Opportunity*, 386 F. Supp. 1177 (D. Minn. 1974). The courts have a duty to protect constitutional or fundamental rights from infringement by administrative agencies. *Buettner v. City of St. Cloud*, 277 N.W. 2d 199 (Minn. 1979). The Supreme Court can interfere with the conclusions of an administrative agency where an agency has violated a constitutional provision or has not kept within its jurisdiction. *Bryan v. Community State Bank of Bloomington*, 172 N.W. 2d 771 (1969).

When petitioner brought his motion to vacate to the Minnesota Supreme Court, he called to the courts attention in his Memorandum of Law the violations of federal law and federal questions that the State Board of Law Examiners made which denied him of due process and equal protection under the Fifth and Fourteenth Amendments to the United States Constitution. Petitioner stated to the court on page 5 of his Memorandum that "There is a violation of due process